

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DePuy Mitek, Inc.	)	
a Massachusetts Corporation	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-12457 PBS
	)	
Arthrex, Inc.	)	
a Delaware Corporation, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS' MOTION TO STRIKE AS UNTIMELY DEPUY MITEK'S RESPONSE  
TO DEFENDANTS' OBJECTIONS TO MAGISTRATE'S ORDER GRANTING DEPUY  
MITEK, INC.'S MOTION TO PRECLUDE ARTHREX, INC. AND PEARSALLS, LTD.  
FROM SUPPLEMENTING THEIR EXPERT REPORTS AND DEPOSITIONS, OR IN  
THE ALTERNATIVE, MOTION TO REPLY THERETO**

Defendants Arthrex, Inc. ("Arthrex") and Pearsalls, Ltd. ("Pearsalls") (together, "defendants") move to strike as untimely DePuy Mitek, Inc.'s ("DePuy Mitek's") response to defendants' objections to Magistrate's Order granting DePuy Mitek's motion to preclude defendants from supplementing their expert reports and depositions, or in the alternative, move to reply thereto.

As explained in more detail in the accompanying memorandum, defendants filed their objections to the Magistrate's Order on November 2, 2006. Pursuant to Local Rule 7.1(b)(2), DePuy Mitek had fourteen (14) days -- *i.e.*, until November 16, 2006 -- within which to file a response to defendants' objections. DePuy Mitek failed to do so. Thus, DePuy Mitek's motion should be stricken as untimely.

In the event the Court denies defendants' motion to strike DePuy Mitek's response, defendants move, in the alternative, to reply thereto. DePuy Mitek's "response" was not only untimely, but as described more fully in the accompanying memorandum, DePuy Mitek introduces several new issues not raised by defendants in their objections to the Magistrate's Order. Moreover, DePuy Mitek's "response" includes factual and legal inaccuracies designed to mislead the Court. Thus, in the interest of fairness, defendants seek to reply to the new issues introduced by DePuy Mitek and also to correct the factual and legal inaccuracies asserted by DePuy Mitek in its "response." Defendants' proposed Reply is attached hereto.

Pursuant to Local Rule 7.1(a)(2), counsel for defendants conferred with counsel for DePuy Mitek on December 1 and 4, 2006, in good faith attempts to resolve or narrow the issues of this motion. No resolution or narrowing of the issues could be reached by counsel.

Dated: December 4, 2006

Respectfully submitted,

By: /s/Salvatore P. Tamburo  
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Counsel for Defendants  
Arthrex, Inc. and Pearsalls Ltd.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing  
DEFENDANTS' MOTION TO STRIKE AS UNTIMELY DEPUY MITEK'S  
RESPONSE TO DEFENDANTS' OBJECTIONS TO MAGISTRATE'S ORDER  
GRANTING DEPUY MITEK, INC.'S MOTION TO PRECLUDE ARTHREX, INC.  
AND PEARSALLS, LTD. FROM SUPPLEMENTING THEIR EXPERT REPORTS  
AND DEPOSITIONS, OR IN THE ALTERNATIVE, MOTION TO REPLY THERETO,  
Memorandum in support thereof, proposed Order and proposed Reply were served, via  
the Court's email notification system on the following counsel for Plaintiff on the 4th day  
of December 2006:

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\_\_\_\_\_  
/s/Salvatore P. Tamburo

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Defendants.	)	

**ORDER**

Upon consideration of Defendants' Motion to Strike as Untimely DePuy Mitek's Response to Defendants' Objections to Magistrate's Order Granting DePuy Mitek, Inc.'s Motion to Preclude Arthrex, Inc. and Pearsalls, Ltd. From Supplementing Their Expert Reports and Depositions, or in the Alternative, Motion to Reply Thereto, Memorandum in Support Thereof and any opposition thereto, it is ORDERED that the motion is GRANTED.

This \_\_\_ day of December, 2006.

\_\_\_\_\_  
PATTI B. SARIS  
UNITED STATES DISTRICT COURT JUDGE